IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2013 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAY AUTOMOTIVE PVT. LTD.

Versus

KIRITKUMAR C MODI

Appearance:

1. Criminal Misc.Application No. 2013 of 1997

MR MUKESH R SHAH for Petitioner No. 1-3

NOTICE SERVED for Respondent No. 1

MR PR ABICHANDANI, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/02/2003

ORAL JUDGEMENT

Present petitioners-original accused against whom process has been issued by the learned Metropolitan

Magistrate, Court No.2, Ahmedabad, for the offences punishable under Secs.406, 420 and 427 of IPC based on a complaint filed by the respondent No.1 herein, M/s Sangam Alloy Pvt. Ltd. through its Accountant, Mr.Kiritkumar C. Modi, which has been registered as Criminal Case No.3067 of 1996, has preferred the present petition under Sec.482 of the Code of Criminal Procedure for quashing.

2. According to the complainant, there are business transactions between the petitioners and the respondent No.1-complainant and an order for supply of goods was placed by the petitioner Nos.2 and 3 over telephone with the original complainant. Said order was executed by sending the consignment through transport and Bill of Exchange and Lorry Receipt were sent through the bank of the complainant to the bank of the petitioners which were negotiated through Oriental bank of Commerce, Ahmedabad and sent to the petitioner's bank viz., Indian Bank, Singanallur Branch for Rs.1,27,133/-. It is alleged that the petitioners had neither taken delivery of goods nor realised the bill nor made payment for the said goods and hence, notice was issued by the complainant alleging that petitioners have committed breach of trust and have caused damage to the goods worth Rs.1,27,133/and since the offences as alleged have been committed by the petitioners, complaint was filed by the respondent No.1, M/s Sangam Alloy Pvt. Ltd. through its Accountant, Mr.Kiritkumar C. Modi in which process was issued by the learned Metropolitan Magistrate, Court No.2, Ahmedabad, for the offences punishable under Secs.406, 420 and 427 of the Indian Penal Code which is giving rise to prefer the present petition.

3. It appears that notice was issued by the Court to the respondent No.1-complainant and as per the office noting, same was duly served. However, the complainant has chosen not to appear either personally or through advocate.

4. Heard learned counsel for the petitioners, Mr.M.R.Shah and learned APP, Mr.P.R.Abichandani, for the respondent No.2.

5. Mr.Shah, drawing my attention towards paras 2, 3 and 4 of the complaint, has argued that the transaction in question is purely a civil transaction between the parties and no order for supply of goods has been placed by the petitioners over phone, then also, goods were sent by the complainant with a letter stating that the petitioners should inform the complainant on telephone if they are not interested in the goods. It was further

argued that upon receipt of said letter, the petitioners have asked the complainant to get back the materials as they are interested in the goods and he has received the goods back and, therefore, question of cheating does not arise. He has relied upon various judgments.

6. It appears from the above that the transaction in question is only a civil transaction and it has been tried to be converted into a criminal one by the complainant and hence, the complaint is nothing but a pressure tactics applied by the complainant on the petitioners. Hence, the impugned complaint deserves to be quashed and set aside and petition requires to be allowed.

7. This petition is allowed. The complaint being Criminal Case No.3067 of 1996 filed against the petitioners by the respondent No.1-complainant pending in the Court of learned Metropolitan Magistrate, Court No.2, Ahmedabad is hereby quashed. Rule is made absolute.

(R.P.DHOLAKIA,J.)
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